



## Senate

General Assembly

**File No. 726**

January Session, 2015

Substitute Senate Bill No. 1032

*Senate, April 20, 2015*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE APPLICABILITY OF THE STATUTE OF LIMITATIONS TO CONSTRUCTION AND DESIGN ACTIONS BROUGHT BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1      Section 1. (NEW) (*Effective October 1, 2017*) (a) As used in this  
2 section: (1) "Construction-related work" means the design,  
3 construction, construction management, planning, construction  
4 administration, surveying, supervision, inspection or observation of  
5 construction of improvements to real property; and (2) "tolling  
6 agreement" means a written agreement between the state or a political  
7 subdivision of the state and (A) a person performing or furnishing  
8 construction-related work, (B) a surety, or (C) an insurer, by which the  
9 person, surety or insurer agrees to extend the limitation period within  
10 which the state or a political subdivision may bring an action or claim  
11 against such person, surety or insurer.

12      (b) For any improvement to real property substantially completed

13 on or after October 1, 2017, and subject to any statutory or common  
14 law rules tolling limitations periods, no action or claim, whether in  
15 contract, in tort, or otherwise, to recover damages for any deficiency  
16 arising out of construction-related work, or for any injury to property,  
17 real or personal, or for any injury to the person, or bodily injury or  
18 wrongful death, arising out of any such deficiency, shall be brought by  
19 the state or any political subdivision of the state more than ten years  
20 after the date of substantial completion of such improvement.

21 (c) No action or claim described in subsection (b) of this section for  
22 an improvement to real property substantially completed prior to  
23 October 1, 2017, shall be brought by the state or any political  
24 subdivision of the state after October 1, 2027.

25 (d) For any improvement to real property substantially completed  
26 on or after October 1, 2017, and subject to any statutory or common  
27 law rules tolling limitations periods, an action or claim for indemnity  
28 or contribution arising out of construction-related work shall be  
29 brought by the state or any political subdivision of the state not more  
30 than ten years after the date of substantial completion of such  
31 improvement or not later than three years after the date of the  
32 determination of the action or claim against the state or political  
33 subdivision of the state that is seeking indemnification by either  
34 judgment or settlement, whichever occurs later. For any improvement  
35 to real property substantially completed prior to October 1, 2017, and  
36 subject to any statutory or common law rules tolling limitations  
37 periods, an action or claim for indemnity or contribution arising out of  
38 construction-related work shall be brought by the state or any political  
39 subdivision of the state not later than October 1, 2027, or not later than  
40 three years after the date of the determination of the action or claim  
41 against the state or political subdivision of the state that is seeking  
42 indemnification by either judgment or settlement, whichever occurs  
43 later.

44 (e) The limitations prescribed in subsections (b) to (d), inclusive, of  
45 this subsection shall not bar an action or claim (1) on a written

46 warranty, guarantee or other agreement, including a tolling  
 47 agreement, that expressly provides for a longer effective period; (2)  
 48 based on wilful misconduct in connection with the performance or  
 49 furnishing of construction-related work; (3) under any environmental  
 50 remediation law or pursuant to any contract entered into by the state  
 51 or any political subdivision of the state in carrying out its  
 52 responsibilities under any environmental remediation law; or (4)  
 53 pursuant to any contract for enclosure, removal or encapsulation of  
 54 asbestos.

55 (f) For the purposes of subsections (b) to (d), inclusive, of this  
 56 section, an improvement to real property shall be considered  
 57 substantially complete when such real property is first (1) used by the  
 58 state or any political subdivision of the state, or a tenant thereof; or (2)  
 59 available for use after having been completed in accordance with the  
 60 contract or agreement covering the improvement, including any  
 61 agreed changes to the contract or agreement, whichever occurs first,  
 62 except that any public highway, bridge improvement or improvement  
 63 to railroad right-of-way, ferry, port or airport infrastructure shall be  
 64 considered substantially complete upon the issuance of a certificate of  
 65 acceptance of the work relieving the contractor of maintenance  
 66 responsibility.

67 (g) Except as provided in this section, there shall be no limitation to  
 68 actions brought in the name or for the benefit of the state, and no claim  
 69 of right predicated upon the lapse of time shall be asserted against the  
 70 state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	New section

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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### ***OFA Fiscal Note***

#### ***State Impact:***

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Resources of the General Fund	GF - Potential Revenue Loss	See Below	See Below

Note: GF=General Fund

#### ***Municipal Impact:***

<b>Municipalities</b>	<b>Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
All Municipalities	Potential Revenue Loss	See Below	See Below

### ***Explanation***

The bill creates a statute of limitations brought by the state or municipalities in construction related projects. To the extent that the state or municipalities do not file cases within the statute of limitations, this bill may result in potential revenue loss through legal settlements.

The bill may also result in actions brought forward sooner by the state or municipalities due to the statute of limitations. Any costs associated with these actions would be accelerated due to this bill.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 1032*****AN ACT CONCERNING THE APPLICABILITY OF THE STATUTE OF LIMITATIONS TO CONSTRUCTION AND DESIGN ACTIONS BROUGHT BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.*****SUMMARY:**

This bill subjects the state and its political subdivisions to a statute of limitations for bringing certain actions and claims arising out of construction-related work involving the improvement of real property. Under the bill, the period of time depends on the date the improvement is substantially complete and the nature of the action or claim.

To recover damages for either deficiency arising out of construction-related work or personal or property injury or wrongful death arising out of any such deficiency, the state or any of its political subdivisions must bring its action or claim in contract, tort, or otherwise:

1. within 10 years after the date of substantial completion for an improvement that is substantially complete on or after October 1, 2017 or
2. by October 1, 2027 for improvement that is substantially complete before October 1, 2017.

For a contribution or indemnity arising out of construction-related work, the state or any of its political subdivisions must bring its action or claim by the later of three years after the date an action or claim against the state or its political subdivision has been determined or:

1. 10 years after the date of substantial completion for

improvement that is substantially complete on or after October 1, 2017 or

2. October 1, 2027 for improvement that is substantially complete before October 1, 2017.

The bill exempts certain actions and claims from these statute of limitations.

It also prohibits any additional limitation to actions brought in the name or for the benefit of the state and any claim of right based on the lapse of time against the state.

The bill also makes technical and conforming changes.

## **CONSTRUCTION-RELATED WORK**

Under the bill, "construction-related work" means the design, construction, construction management, planning, construction administration, surveying, supervision, inspection, or observation of construction of improvements to real property.

## **IMPROVEMENT SUBSTANTIALLY COMPLETE**

Under the bill, with certain exceptions, an improvement to real property is substantially complete when (1) the state, its political subdivisions, or a tenant first uses it or (2) it is first available for use after having been completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever is earlier. Improvement to public highways, bridges, railroad right-of-way, or ferry, port, or airport infrastructure is substantially complete when a certificate of acceptance of the work is issued by the state or its political subdivisions that relieves the contractor of maintenance responsibility.

## **EXCEPTIONS**

The statute of limitations established by this bill does not apply to an action or claim:

1. on a written warranty, guarantee or other agreement, including

- a tolling agreement, that expressly provides for a longer effective period;
2. based on willful misconduct in connection with the performance or furnishing of construction-related work;
  3. under any environmental remediation law or pursuant to any contract entered into by the state or its political subdivision in carrying out its responsibilities under any environmental remediation law; or
  4. under any contract for enclosure, removal or encapsulation of asbestos.

Under the bill, a "tolling agreement" is a written agreement between (1) the state or any of its political subdivisions and (2) a person performing or furnishing construction-related work, a surety, or an insurer, to extend the limitation period within which the state or its political subdivision may bring an action or claim against such person, surety, or insurer.

EFFECTIVE DATE: October 1, 2017

## **BACKGROUND**

### ***Related Court Case***

Under the common law doctrine of *nullum tempus occurrit regi* (no time runs against the king), a statute of limitations does not apply to a state unless a law specifically provides that it does.

In *State of Connecticut v. Lombardo Brothers Mason Contractors, Inc., et al.*, the Connecticut Supreme Court unanimously held that this doctrine is part of the Connecticut common law and that the state could proceed with an action for damages against contractors of the UConn Law School library, notwithstanding the statute of limitations that would otherwise apply. The Court also held that the public works commissioner lacked statutory authority to waive the state's rights by contract, as he had done in this instance (307 Conn. 412 (2012)).

***Statute of Limitations for Nongovernmental Parties***

By law, the statute of limitations for actions by nongovernmental parties against design professionals is generally seven years after substantial completion of the improvement. But, in the case of an injury to property or persons or wrongful death arising from an injury when the injury occurred during the seventh year after substantial completion, an action in tort to recover damages may be brought within one year after the date of injury but no more than eight years after substantial completion of the improvement's construction (CGS § 52-584a).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 43 Nay 0 (04/06/2015)